

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-1. Short title.

This article shall be known and may be cited as the "Fire Prevention and Control Act."

§29-3-2. Legislative findings and declaration of policy.

The Legislature hereby finds and declares that:

- (a) A significant part of the population of this state needs improved fire prevention and control;
- (b) The establishment and maintenance of a coordination program for fire prevention and control for the entire state is necessary to promulgate the safety and well-being of the citizens and residents of this state;
- (c) Adequate fire prevention and control are not likely to become a reality unless certain administrative functions and procedures are enacted by law; and
- (d) Fire prevention and control are a public purpose and a responsibility of government for which public money may be spent.

§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

(a) There is hereby created a state fire commission, which shall consist of thirteen members, qualified by experience and training to deal with the matters which are the responsibilities of the commission. The officers of the West Virginia fire chiefs association, the West Virginia firemen's association, the West Virginia professional fire fighters association, the West Virginia professional fire chiefs association, the West Virginia manufacturers association, the professional independent insurance agents of West Virginia, and the West Virginia society of architects shall submit a list of names of persons recommended by each of these associations to the governor for consideration in appointing the state fire commission. The West Virginia professional fire fighters association and the West Virginia professional fire chiefs association shall recommend the names of two persons from full-time paid fire departments. The West Virginia fire chiefs association and the West Virginia firemen's association shall each recommend the names of three persons from volunteer fire departments. The West Virginia manufacturers association shall recommend the names of three persons to represent business and industry. The professional independent insurance agents of West Virginia shall recommend the names of two persons to represent the fire insurance industry. The West Virginia society of architects shall recommend the names of two persons to represent registered architects. Appointments to the commission shall be made by the governor, by and with the advice and consent of the Senate, from the lists of qualified persons recommended by the organizations. Three members shall be appointed to represent full-time paid fire departments, one member shall be appointed to represent the full-time paid fire chiefs, three members shall be appointed to represent volunteer fire departments and two members shall be appointed to represent the volunteer fire chiefs. Two members shall be appointed to represent business and industry and one member shall be appointed to represent the fire insurance industry. One member shall be appointed to represent registered architects. The term of office of the members shall be staggered five-year terms. The terms of members first appointed shall expire as designated by the governor at the time of appointment, two at the end of one year, two at the end of two years, three at the end of three years, two at the end of four years and two at the end of five years. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of a term. Any member is subject to removal by the governor at any time for neglect of his duties or other conduct unbecoming his office. The governor shall make the appointments within ninety days after this section takes effect.

(b) The members of the state fire commission shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their duties.

§29-3-4. Chairman; vice chairman; meetings; quorum.

(a) The state fire commission shall select a chairman and vice chairman from among its members and shall hold regular meetings at least once every two months and special meetings when called by its chairman. In the absence of the chairman, the vice chairman shall exercise the powers and duties of the chairman.

(b) No business shall be transacted by the state fire commission in the absence of a quorum which shall be six members, one of whom must be the chairman or vice chairman.

§29-3-5. Promulgation of regulations and state fire code.

(a) The state fire commission shall have the power to promulgate, amend and repeal regulations for the safeguarding of life and property from the hazards of fire and explosion pursuant to the provisions of chapter twenty-nine-a of this code. Such regulations, amendments or repeals thereof shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, municipalities and political subdivisions of the state.

(b) Pursuant to the provisions of chapter twenty-nine-a of this code, the state fire commission, by the first day of January, one thousand nine hundred seventy-seven, shall promulgate comprehensive regulations for the safeguarding of life and property from the hazards of fire and explosion to be known as the state fire code. Regulations embodied in the state fire code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, municipalities and political subdivisions of the state. Whenever any other state law, county or municipal ordinance or regulation of any fire codes published by the national protection association: **Provided,** That such rules shall be effective as emergency rules when so promulgated until acted upon by the Legislature: **Provided, however,** That the state fire marshal shall provide compliance alternatives for historic structures as provided for in section five, article one of this chapter, which compliance alternatives shall take into account the historic integrity of said historic structures; and shall coordinate with the director of the archives and history division the application of the rules and regulations of that division.

(c) In interpretation and application, the state fire code shall be held to be the minimum requirements for the safeguarding of life and property from the hazards of fire and explosion: **Provided,** That the state fire marshal shall provide compliance alternatives for historic structures and sites as provided for in section five, article one of this chapter, which compliance alternatives shall take into account the historic integrity of said historic structures and sites. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the state fire code, the provisions of such state law, county or municipal ordinance or regulation of any agency thereof shall govern, provided they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the state fire commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with state fire regulations by officials of the state, counties, municipalities and political subdivisions of the state.

§29-3-5a. Hazardous substance emergency response training programs.

(a) Within one hundred twenty days of the effective date of this section, the state fire commission shall promulgate rules pursuant to chapter twenty-nine-a of this code establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the state fire marshal.

(b) For the purposes of this section, "hazardous substance" means any hazardous substance as defined in chapter eighty-eight, Acts of the Legislature, regular session, one thousand nine hundred eighty-five any "chemical substances and materials" listed in the rules promulgated by the commissioner of labor pursuant to section eighteen, article three, chapter twenty-one of this code, and any "hazardous waste" as defined in section three, article eighteen, chapter twenty-two of this code.

§29-3-5b. Promulgation of rules and statewide building code.

(a) The state fire commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a state building code. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the state building code: *Provided*, That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application.

(b) The state fire commission has authority to propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, regarding building construction, renovation and all other aspects as related to the construction and mechanical operations of a structure. The rules shall be known as the "State Building Code."

(c) The state fire commission has authority to propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a, establishing state standards and fee schedules for the licensing, registration, certification, regulation and continuing education of persons which will conduct inspections relating to the state building code, which include, but are not limited to, building code officials, inspectors, plans examiners and home inspectors.

(d) The state fire commission has authority to establish advisory boards as it deems appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the state building code or related construction or renovation practices.

(e) For the purpose of this section, the term "building code" is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the state building code, the provisions of the state law, county or municipal ordinance or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the state fire commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with state building code by officials of the state, counties, municipalities and political subdivisions of the state.

(f) Enforcement of the provisions of the state building code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: *Provided*, That any county or municipality may adopt the state building code with or without adopting the BOCA national property maintenance code.

(g) After the state fire commission has promulgated rules as provided in this section, each county or municipality intending to adopt the state building code shall notify the state fire commission of its intent.

(h) The state fire commission may conduct public meetings in each county or municipality adopting the state building code to explain the provisions of the rules.

(i) The provisions of the state building code relating to the construction, repair, alteration, restoration and movement of structures are not mandatory for existing buildings and structures identified and classified by the state register of historic places under the provisions of section eight, article one of this chapter or the national register of historic places, pursuant to Title XVI, section 470a of the United States Code. Prior to renovations regarding the application of the state building code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the division of culture and history, state historic preservation office. The final decision is vested in the state fire commission. Additions constructed on a historic building are not excluded from complying with the state building code.

§29-3-6. Public hearings and notice.

(a) Prior to the promulgation of a state fire code as provided in section five of this article, the state fire commission shall hold at least one public hearing on the proposed regulations contained therein, notice of which shall be the same as the notice for a hearing as provided in the administrative procedure act, chapter twenty-nine-a of this code.

(b) After the adoption of a state fire code, prior to the promulgation of any additional regulation, amendment to or repeal of a current regulation, the state fire commission shall hold at least one hearing on each new regulation, each amendment to and each repeal of a current regulation to be separately submitted, notice of which shall be the same as the notice for a hearing as provided in the administrative procedure act, chapter twenty-nine- a of this code.

§29-3-7. Commission's powers in conduct of public hearing.

For the purposes of any public hearing under this article, the state fire commission is empowered and authorized to issue subpoenas and subpoenas duces tecum, to take testimony and to administer oaths to any witness in any proceeding or examination instituted before it or conducted by it with reference to any matter within its jurisdiction. In all hearings or proceedings before the state fire commission the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process the state fire commission or any party to the proceedings before the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books and documents. And such court, in case of refusal to obey the subpoena issued to any person subject to the provisions of this chapter, shall issue an order requiring such person to appear before the state fire commission and produce all books and papers, if so ordered, and give evidence touching the matter in question.

§29-3-8.

Repealed.

Acts, 1992 Reg. Sess., Ch. 194.

§29-3-9. Powers, duties and authority of state fire commission and

state fire marshal.

(a) The state fire commission may employ personnel, fix their compensation and, within funds available to do so, incur expenses as necessary in the performance of the duties of its office.

(b) The state fire commission is responsible for fire programs within this state, including the state fire marshal's office, training, uniform standards and certification, finance and planning and fire prevention.

(c) All state and area training and education in fire service shall be coordinated by the state fire commission. The state fire marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commissioner.

(d) The state fire commission shall develop minimum training levels for firefighters, minimum levels of equipment needed to protect life and property within fire service areas, minimum performance standards the departments must meet in response times, communications, minimum levels of water flow and pressure and other performance measures as considered necessary to meet the overall goals of improved fire prevention and control. The state fire commission may make recommendations to the state insurance commissioner regarding town classifications for fire insurance rates.

(e) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the state fire commission. The state fire commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(f) The state fire commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: Manpower needs; location of training centers; location of fire prevention and control units; communications; fire-fighting facilities; water sources; vehicular needs; public education and information; public participation; standardization in record keeping; evaluation of personnel; reporting of fire hazards; programs on mutual aid; location of public safety agencies; outline of fire prevention programs; and accessibility of fire prevention information.

(g) The state fire commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning and certification.

(h) The state fire marshal may accept, on behalf of the state fire commission, gifts, grants, court ordered civil forfeiture proceedings and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions. The state fire marshal, acting on behalf of the state fire commission, may enter into, sign and execute any agreements and do and perform any acts that may be necessary, useful, desirable or convenient to effectuate the purposes of this article. Moneys from gifts, grants, civil forfeiture proceedings and bequests received by the state fire marshal shall be deposited into the special account set forth in subsection (c), section twelve-b of this article, and the state fire marshal, with the approval of the state fire commission, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.

(i) The state fire commission shall establish standards and procedures by policy to implement the provisions of this section with regard to the following:

(1) Fire prevention and control;

(2) Uniform standards of performance, equipment and training;

(3) Certification;

(4) Training and education in fire service; and

(5) The creation, operation and responsibilities of fire departments throughout the state.

§29-3-10. State fire marshal's office transferred to state fire commission; powers and duties of state insurance commissioner with respect to fire marshal terminated; operation of commission prior to adoption of code.

The state fire marshal and the state fire marshal's office, heretofore existing in this code, are hereby continued in all respects except that all powers and duties exercised by the state insurance commissioner with respect to the state fire marshal and the state fire marshal's office are terminated and all such powers and duties are hereby transferred to and vested in the state fire commission except as provided otherwise in this article. Until the adoption of a state fire code by the state fire commission, the state fire marshal shall operate under the authority of this article and the authority of the rules and regulations heretofore promulgated by the state fire marshal.

§29-3-11. Appointment of state fire marshal; term of office; removal; salary; qualifications; responsibilities; employees; equipment.

(a) The state fire commission shall appoint a state fire marshal in accordance with the qualifications approved by the state civil service commission as provided in article six, chapter twenty-nine of this code. He can be removed by the commission at any time for neglect of duty or other conduct unbecoming his office as provided in article six, chapter twenty-nine of this code.

(b) The state fire marshal, within policy established by the state fire commission, shall have all responsibility for the implementation of fire safety programs in this state designated to minimize fire hazards and disaster and loss of life and property from these causes. These responsibilities include, but are not limited to, the establishment and enforcement of fire safety practices

throughout the state, preventive inspection and correction activities, coordination of fire safety programs with volunteer and paid fire departments and critical analysis and evaluation of West Virginia's fire loss statistics for determination of problems and solutions.

(c) The state fire marshal may employ such technical, clerical, stenographic and other personnel and fix their compensation and may incur such expenses as may be necessary in the performance of the duties of his office within the appropriation therefor. Employees of the fire marshal's office shall be members of the state civil service system, and all appointments of the office shall be a part of the classified service under the civil service system.

Further, any individual who is employed to conduct criminal investigations or who may become actively involved in matters of a criminal nature shall first be required to pass a civil service examination testing his or her competency and proficiency in the law of arrest, search and seizure and other criminal procedures relating to the powers granted to the state fire marshal pursuant to the provisions of this article.

(d) The state fire marshal and other personnel of the state fire marshal's office shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for other state agencies.

§29-3-12. Powers and duties of state fire marshal.

(a) *Enforcement of laws.* -- The state fire marshal and any other person authorized to enforce the provisions of this article under the supervision and direction of the state fire marshal has the authority to enforce all laws of the state having to do with:

- (1) Prevention of fire;
- (2) The storage, sale and use of any explosive, combustible or other dangerous article or articles in solid, flammable liquid or gas form;
- (3) The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires;
- (4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;
- (5) The suppression of arson; and
- (6) Any other thing necessary to carry into effect the provisions of this article including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed or used in direct violation of the state fire code.

(b) *Assistance upon request.* -- Upon request, the state fire marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, state police officer, conservation officer or any county or municipal law-enforcement officer, the state fire marshal, any deputy state fire marshal or assistant state fire marshal employed pursuant to section eleven of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer's official duties: *Provided*, That the state fire marshal or other person authorized to act under this subsection shall at all times work under the direct supervision of the requesting officer.

(c) *Enforcement of rules.* -- The state fire marshal shall enforce the rules promulgated by the state fire commission as authorized by this article.

(d) *Inspections generally.* -- The state fire marshal shall inspect all structures and facilities, other than one- and two-family dwelling houses, subject to the state fire code and this article, including, but not limited to, state, county and municipally owned institutions, all public and private schools, health care facilities, theaters, churches and other places of public assembly to determine whether the structures or facilities are in compliance with the state fire code.

(e) *Right of entry.* -- The state fire marshal may, at all reasonable hours, enter any building or premises, other than dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The state fire marshal and any deputy state fire marshal or assistant state fire marshal approved by the state fire marshal may enter upon any property, or enter any building, structure or premises, including dwelling houses during construction and prior to occupancy, for the purpose of ascertaining compliance with the conditions set forth in any permit or license issued by the office of the state fire marshal pursuant to subdivision (1), subsection (a), section twelve-b of this article or of article three-b of this chapter.

(f) *Investigations.* -- The state fire marshal may, at any time, investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The state fire marshal has the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or explosions or attempt to cause fires or explosions may have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of such investigation, the state fire marshal shall obtain a proper search warrant: *Provided*, That a search warrant is not necessary where there is permissive waiver or the state fire marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.

(g) *Testimony.* -- The state fire marshal, in making an inspection or investigation when in his or her judgment such proceedings are necessary, may take the statements or testimony under oath of all persons who may be cognizant of any facts or have any knowledge about the matter to be examined and inquired into and may have the statements or testimony reduced to writing; and shall transmit a copy of such statements or testimony so taken to the prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred. Notwithstanding the above, no person may be compelled to testify or give any such statement under this subsection.

(h) *Arrests; warrants.* -- The state fire marshal, any full-time deputy fire marshal or any full-time assistant fire marshal employed by the state fire marshal pursuant to section eleven of this article is hereby authorized and empowered and any person deputized pursuant to subsection (j) of this section may be authorized and empowered by the state fire marshal:

(1) To arrest any person anywhere within the confines of the state of West Virginia, or have him or her arrested, for any violation of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter: *Provided*, That any and all persons so arrested shall be forthwith brought before the magistrate or circuit court.

(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute an arrest warrant when knowing or having reason to believe that anyone has committed an offense under any provision of this article, of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter. Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over such violation.

(3) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute a warrant for the search of any premises that may possess evidence or unlawful contraband relating to violations of this article, of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter. Proper return shall be made on all search warrants before the tribunal having jurisdiction over such violation.

(i) *Witnesses and oaths.* -- The state fire marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the state fire marshal and cause to be produced before him or her such papers as he or she may require in making such examination. The state fire marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him or her. False swearing in any matter or proceeding aforesaid shall be considered perjury and shall be punishable as such.

(j) *Deputizing members of fire departments in this state.* -- The state fire marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his or her department and who is properly qualified to act as his or her assistant for the purpose of making inspections with the consent of the property owner or the person in control of

the property and such investigations as may be directed by the state fire marshal, and the carrying out of such orders as may be prescribed by him or her, to enforce and make effective the provisions of this article and any and all rules promulgated by the state fire commission under authority of this article: *Provided*, That in the case of a volunteer fire department, only the chief thereof or his or her single designated assistant may be so deputized.

(k) *Written report of examinations.* -- The state fire marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him or her regarding any fire happening within their respective jurisdictions.

(l) *Report of losses by insurance companies.* -- It is the duty of each fire insurance company or association doing business in this state, within ten days after the adjustment of any loss sustained by it that exceeds fifteen hundred dollars, to report to the state fire marshal information regarding the amount of insurance, the value of the property insured and the amount of claim as adjusted. This report is in addition to any such information required by the state insurance commissioner. Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the state fire marshal shall report in writing to the owner or insurer the result of the examination regarding the property.

(m) *Issuance of permits and licenses.* -- The state fire marshal is authorized to issue permits, documents and licenses in accordance with the provisions of this article or of article three-b of this chapter. The state fire marshal may require any person who applies for a permit to use explosives, other than an applicant for a license to be a pyrotechnic operator under section twenty-four of this article, to be fingerprinted and to authorize the state fire marshal to conduct a criminal records check through the criminal identification bureau of the West Virginia state police and a national criminal history check through the federal bureau of investigation. The results of any criminal records or criminal history check shall be sent to the state fire marshal.

(n) *Issuance of citations for fire and life safety violations.* -- The state fire marshal, any deputy fire marshal and any assistant fire marshal employed pursuant to section eleven of this article are hereby authorized, and any person deputized pursuant to subsection (j) of this section may be authorized by the state fire marshal to issue citations, in his or her jurisdiction, for fire and life safety violations of the state fire code and as provided for by the rules promulgated by the state fire commission in accordance with article three, chapter twenty-nine-a of this code: *Provided*, That a summary report of all citations issued pursuant to this section by persons deputized under subsection (j) of this section shall be forwarded monthly to the state fire marshal in such form and containing information as he or she may by rule require, including the violation for which the citation was issued, the date of issuance, the name of the person issuing the citation and the person to whom the citation was issued. The state fire marshal may at any time revoke the authorization of a person deputized pursuant to subsection (j) of this section to issue citations, if in the opinion of the state fire marshal, the exercise of authority by the person is inappropriate.

Violations for which citations may be issued include, but are not limited to:

(1) Overcrowding places of public assembly;

(2) Locked or blocked exits in public areas;

(3) Failure to abate a fire hazard;

(4) Blocking of fire lanes or fire department connections; and

(5) Tampering with, or rendering inoperable except during necessary maintenance or repairs, on-premise fire-fighting equipment, fire detection equipment and fire alarm systems.

(o) *Required training; liability coverage.* -- No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the law-enforcement training subcommittee of the governor's committee on

criminal justice and highway safety and the state fire commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of such person has been provided, in the case of a paid municipal fire department by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located or by the municipality served by the volunteer fire department and that evidence of liability coverage has been filed with the state fire marshal.

(p) *Penalties for violations.* -- Any person who violates any fire and life safety rule of the state fire code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county or regional jail not more than ninety days, or both fined and imprisoned.

Each and every day during which any violation of the provisions of this article continues after knowledge or official notice that same is illegal is a separate offense.

§29-3-12a. Responsibilities of insurance companies in fire loss investigation.

(a) The fire marshal, any assistant fire marshal or any investigator under the authority of the fire marshal may request any insurance company investigating a fire loss of real or personal property to release any information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information shall include, but is not limited to:

(1) Any policy in force;

(2) Any application for a policy;

(3) Premium payment records;

(4) History of previous claims;

(5) Material relating to the investigation of the loss, including statements of any person, proof of loss and any other relevant evidence.

(b) Any insurance company shall notify the fire marshal, if it has reason to believe, based on its investigation of a fire loss to real or personal property, that the fire was caused by other than accidental means. The company shall furnish the fire marshal with pertinent information acquired during its investigation and cooperate with the courts and administrative agencies of the state, and any official mentioned, or referred to, in subsection (a) of this section.

(c) In the absence of fraud, no insurance company or person who furnishes information on its behalf, shall be liable for any oral or written statement or any other action necessary to supply information required pursuant to this section.

(d) Any information furnished pursuant to this section shall be held in confidence until such time as its release may be required pursuant to a criminal proceeding.

(e) Any official mentioned, or referred to, in subsection (a) of this section may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss.

§29-3-12b. Fees.

(a) The state fire marshal may establish fees in accordance with the following:

(1) *For blasting.* -- Any person storing, selling or using explosives shall first obtain a permit from the state fire marshal. The permit shall be valid for one year. The state fire marshal may charge a fee for the permit.

(2) *For inspections of schools or day-care facilities.* -- The state fire marshal may charge a fee of up to twenty-five dollars per annual inspection for inspection of schools or day-care facilities: *Provided*, That only one such fee may be charged per year for any building in which a school and a day-care facility are colocated: *Provided, however*, That any school or day-care facility may not be charged for an inspection more than one time per twelve-month period.

(3) *For inspections of hospitals or nursing homes.* -- The state fire marshal may charge an inspection fee of up to one hundred dollars per annual inspection of hospitals or nursing homes: *Provided*, That any hospital or nursing home may not be charged for an inspection more than one time per twelve-month period.

(4) *For inspections of personal care homes or board and care facilities.* -- The state fire marshal may charge an inspection fee of up to fifty dollars per annual inspection for inspections of personal care homes or board and care facilities: *Provided*, That any personal care home or board and care facility may not be charged for an inspection more than one time per twelve-month period.

(5) *For inspections of residential occupancies.* -- The state fire marshal may charge an inspection fee of up to one hundred dollars for each inspection of a residential occupancy. For purposes of this subdivision, "residential occupancies" are those buildings in which sleeping accommodations are provided for normal residential purposes.

(6) *For inspections of mercantile occupancies.* -- The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of mercantile occupancies: *Provided*, That if the inspection is in response to a complaint made by a member of the public, the state fire marshal shall obtain from the complainant an advance inspection fee of twenty-five dollars. This fee shall be returned to the complainant if, after the state fire marshal has made the inspection, he or she finds that the complaint was accurate and justified, and he or she shall thereafter collect an inspection fee of up to one hundred dollars from the mercantile occupancy. If, after the inspection has been performed, it appears to the state fire marshal that the complaint was not accurate or justified, the state fire marshal shall keep the twenty-five dollar advance inspection fee obtained from the complainant and may not collect any fees from the mercantile occupant. For purposes of this section, "mercantile occupancy" includes stores, markets and other rooms, buildings or structures for the display and sale of merchandise.

(7) *For business occupancies.* -- The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of business occupancies: *Provided*, That the provisions in subdivision (6) of this section shall apply regarding complaints by members of the public. For purposes of this section, "business occupancies" are those buildings used for the transaction of business, other than mercantile occupancies, for the keeping of accounts and records and similar purposes.

(8) *For inspections of assembly occupancies.* -- The state fire marshal may charge an inspection fee not more than one time per twelve-month period for the inspection of assembly occupancies. The inspection fee shall be assessed as follows: For Class C assembly facilities, an inspection fee not to exceed fifty dollars; for Class B assembly facilities, an inspection fee not to exceed seventy-five dollars; and for Class A facilities, an inspection fee not to exceed one hundred dollars.

For purposes of this subdivision, an "assembly occupancy" includes, but is not limited to, all buildings or portions of buildings used for gathering together fifty or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement or awaiting transportation. For purposes of this section, a "Class C assembly facility" is one that accommodates fifty to three hundred persons; a "Class B facility" is one which accommodates more than three hundred persons but less than one thousand persons; and a "Class A facility" is one which accommodates more than one thousand persons.

(b) The state fire marshal may collect fees for the fire safety review of plans and specifications for new and existing construction. Fees shall be paid by the party or parties receiving the review.

(1) *Structural barriers and fire safety plans review.* -- The fee is one dollar for each one thousand dollars of construction cost up to the first one million dollars. Thereafter, the fee is forty cents for each one thousand dollars of construction cost.

(2) *Sprinkler system review.* -- The fee charged for the review of an individual sprinkler system is as follows: Number of heads: One to two hundred -- eighty-five dollars; two hundred one to three hundred -- one hundred dollars; three hundred one to seven hundred fifty -- one hundred twenty dollars; over seven hundred fifty -- one hundred twenty dollars plus ten cents per head over seven hundred fifty.

(3) *Fire alarm systems review.* -- The fee charged for the review of a fire alarm system is fifty dollars for each ten thousand square feet of space with a fifty dollar minimum charge.

(4) *Range hood extinguishment system review.* -- The fee is twenty-five dollars per individual system reviewed.

(5) *Carpet specifications.* -- The fee for carpet review and approval is twenty dollars per installation.

(c) All fees authorized and collected pursuant to this article and article three-b of this chapter shall be paid to the state fire commission and thereafter deposited into the special account in the state treasury known as the "fire marshal fees fund". Expenditures from the fund shall be for the purposes set forth in this article and articles three-b and three-c of this chapter and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Any balance remaining in the special account at the end of any fiscal year shall be reappropriated to the next fiscal year.

(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the state fire marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least forty-eight hours prior to the scheduled inspection the owner or occupant requests the state fire marshal to reschedule the inspection. In the event a second inspection is required by the state fire marshal as a result of the owner or occupant failing to be ready for the inspection when the state fire marshal arrives, the state fire marshal shall charge the owner or occupant of the occupancy the inspection fees set forth above for each inspection trip required.

(e) The fees provided for in this section shall remain in effect until such time as the Legislature has approved rules promulgated by the state fire marshal, in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing a schedule of fees for services.

§29-3-13. Annual reports.

The state fire commission shall transmit annually to the governor by October thirty-first of each year, an annual report of its activities for the preceding fiscal year. The annual reports shall include documents pertaining to the function and operation of the state fire administrator's office and the state fire marshal's office for the preceding fiscal year.

§29-3-14. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply and right to appeal.

(a) No person shall erect, construct, reconstruct, alter, maintain or use any building, structure or equipment or use any land in such a way to endanger life or property from the hazards of fire or explosion, or in violation of any regulation, or any provision or any change thereof promulgated by the state fire commission under the authority of this article.

(b) Whenever the state fire marshal determines that any building or structure has been constructed, altered or repaired in a manner violating any regulation lawfully promulgated by the state fire commission prior to the commencement of such construction, alteration or repairs; or whenever he may determine that any building or structure constitutes a fire hazard by reason of want of repair, age or dilapidated or abandoned condition, or otherwise, and is so situated as to endanger other buildings and property; or whenever he may find in any building or upon any premises any combustible, flammable or explosive substance or material, or other conditions dangerous to the safety of persons occupying the building or premises and adjacent premises or

property, he may make reasonable orders in writing, directed to the owner of such building, structure or premises, for the repair or demolition of such building or structure, or the removal of the combustible, flammable or explosive substance or material, as the case may be, and the remedying of any conditions found to be in violation of a regulation promulgated as aforesaid or to be dangerous to the safety of persons or property.

A true copy of every order of the state fire marshal as provided for in this section shall be filed in the county where the premises are totally or partially located, with the county clerk who shall index and record the order in the general lien book. Upon filing, the order constitutes notice of such proceedings to all persons or parties thereafter having dealings involving said property.

A statement of the expenses and administrative charges shall also be filed with the county clerk, recorded and indexed in the general lien book and upon filing, shall become a lien against the property. Thereafter a court supervised sale of the property to enforce the collection of the expenses and administrative charges may be prosecuted at the request of the state fire marshal, state fire commission or the attorney general.

Every order provided for in this section shall contain a notice that compliance therewith shall be required within a period of thirty days from the date of issuance thereof and also that any person desiring to contest the validity of any such order may enter an appeal from such order to the state fire commission and then to the circuit court in the county where the premises are totally or partially located as provided in section eighteen of this article.

§29-3-15. Service of repair or demolition order.

The written order of the state fire marshal made pursuant to section fourteen of this article shall be served by delivering a true copy thereof to such owner, or, if the owner is absent from the state or his whereabouts be unknown to the state fire marshal, by mailing a true copy thereof by certified mail to the said owner's last known post-office address, or if no such address be known, then by certified mail to said owner in care of general delivery at the post office serving the community in which said premises lie; the delivering or mailing of such order to be accomplished within five days from the date of the issuance of such order. And in the event it is necessary to mail a copy of such order as aforesaid, the officer mailing the same shall also, within five days from the date of issuance of such order, post a true copy thereof in a conspicuous place on the door or other prominent entrance to said premises.

§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

In the event any owner of any building or premises served with a copy of an order as provided in sections fourteen and fifteen of this article shall fail substantially to comply with such order within thirty days from the date of issuance thereof, or within thirty days after any appeal from such order has been affirmed by the state fire commission or by the court, the state fire marshal may enter into and upon the premises affected by such order and cause the building, structure or premises to be repaired, torn down, materials removed and all dangerous conditions to be remedied, as the case may be, at the expense of the owner and with any administrative charges as established by the commission also being borne by the owner, and if such person shall fail or neglect to repay the state fire marshal the expense and administrative charge thereby incurred by him, within thirty days after written demand shall have been delivered or mailed to the said owner as provided in section fifteen of this article, the state fire marshal is hereby authorized to bring an action in the name of the state to recover such expenses, with interest, and any administrative charge as established by the commission, in any court of competent jurisdiction.

Upon a determination by the state fire marshal that the provisions of sections fourteen and fifteen of this article havenot been met, and that such property constitutes a hazard to health or public safety, in lieu of initiating an order as therein provided, the state fire marshal may notify the county commission or the county health officer in order that they may perform their duties pursuant to section three-ff, article one, chapter seven of this code. The fire marshal may also, in lieu thereof, notify the municipality where the property is located so that the municipality may perform its duties pursuant to section fourteen, article twelve, chapter eight of this code.

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.

(a) On or before the first day of July, one thousand nine hundred ninety-one, an operational smoke detector shall be installed in

the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any "manufactured home" as that term is defined in subsection (j), section two, article nine, chapter twenty-one of this code. The smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided in the national fire protection association standard 72, "Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment", 1996 edition, and in the manufacturer's specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install and replace the operational smoke detectors required by this section. So as to assure that the smoke detector continues to be operational, in each dwelling described in subsection (a) of this section which is not occupied by the owner thereof, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing impaired, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the national fire protection association standard 13D, "Standard for the Installation of Sprinkler Systems in Residential Occupancies", 1989 edition, may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) After the first day of July, one thousand nine hundred ninety-eight, an operational carbon monoxide detector with a suitable alarm shall be installed in accordance with the manufacturer's direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove; and

(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed or bar, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove.

(g) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.

(h) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(i) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

(j) A violation of this section may not be considered by virtue of the violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(k) A violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.

(l) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.

§29-3-16b. Use of live trees in public buildings; exceptions.

Notwithstanding any other provision of law to the contrary, live trees may be displayed in public buildings if the trees are not decorated with electrical lights or are decorated with U.L. approved miniature lights. The provisions of this section do not apply to public buildings used for education, health care, nursing homes or correctional facilities.

§29-3-16c. Safety standards for bed and breakfast establishments; findings.

(a) *Findings.* -- Bed and breakfast establishments provide a unique and important contribution to the state, allowing visitors the opportunity to enjoy many of the aspects of our communities and state not available at hotels and motels and often provide vacationers access to overnight accommodation in areas of this state that would not otherwise be available. These operations continue to grow in number and importance in our state's economy and must be promoted and encouraged by state and local government. Most of these facilities are older residences being converted to this use, and in many cases have architectural and historical significance, and, as with most small businesses, are begun with limited capital available for investment. Any fire safety code standards applicable to these facilities must be sensitive to this distinction and avoid placing a large financial burden on persons operating or planning to operate these facilities. Further, the personal safety of those who live in and visit these facilities is of paramount importance and requires that consideration be made to assure that adequate safety requirements are placed on these facilities to provide for the safety of visitors, residents and, in an emergency, responding firefighters and rescue workers.

(b) *Definition.* -- For the purposes of this section, the term "bed and breakfast establishment" means a building occupied as a one-family dwelling unit that provides sleeping accommodations and breakfast to transient guests for a single fee and does not offer more than six guest rooms to no more than twelve guests.

(c) *Fire code standards.* -- Notwithstanding any provision of this code to the contrary, every bed and breakfast establishment shall be exempt from provisions of fire safety code requirements which are contrary to the following standards:

(1) Each bed and breakfast shall have operational smoke alarms in all common areas, guest rooms and hallways and heat detectors as otherwise required by this code or rule of the Fire Commission. Battery-powered smoke alarms shall be permitted where the establishment has demonstrated that the testing, maintenance and battery replacement procedures will ensure reliable power to the smoke alarms. Notwithstanding any provision of this code to the contrary, no smoking will be allowed inside a bed and breakfast establishment.

(2) Each bed and breakfast shall have operational hard-wired, battery-powered or plug-in emergency lighting that indicate available means of egress. Battery-powered or plug-in emergency lighting devices shall be permitted where the establishment has demonstrated that the testing, maintenance and battery replacement procedures will ensure reliable power to the emergency lighting devices.

(3) Each guest floor shall have a primary and a secondary means of egress. A door leading directly from a guestroom outside the building with access to grade, or a stairway which is covered or enclosed, or a covered balcony or deck with a stairway to grade are acceptable secondary means of egress. A bed and breakfast with third-floor guest rooms must have an accessible second stairway leading from the third floor to grade. Any bed and breakfast establishment with a sprinkler system which otherwise meets the requirements of this section and the state fire safety and building codes is exempt from the requirement of a secondary means of egress. A bed and breakfast establishment which offers three or fewer guest rooms on the first or second floor only, and accommodates no more than six guest occupants at one time, is exempted from the secondary means of egress requirement;

(4) The state Fire Commission shall permit bed and breakfast establishments that cannot readily comply with the requirements of a legislative rule, which may mandate the installation of a secondary means of escape or a sprinkler system, one year per floor of the establishment to comply with the requirements.

(5) All other provisions of the state fire safety code not inconsistent with this section and rules promulgated pursuant to subsection (d) of this section are applicable to bed and breakfast establishments.

(d) *Legislative rules.* -- The state Fire Commission shall promulgate or amend an existing legislative rule, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this section. The rule shall include a mechanism for the Fire Commission to grant individual variances to bed and breakfast establishments which cannot otherwise meet provisions of the state fire safety code due to the historic and architectural significance of the establishment with due consideration of the economic limitations inherent in the operation of this type of small business.

(e) *Historic preservation review.* -- The owner of a bed and breakfast may request the historical preservation section of the Division of Culture and History, pursuant to section eight, article one of this chapter, to consult with the owner and provide a recommendation to the Fire Commission regarding the historic character of the structures used or proposed to be used as a bed and breakfast and any objections or concerns regarding any renovations or other changes required by the Fire Commission or Fire Marshal. If an appeal regarding a decision made by the Fire Marshal is made to the Commission as provided by section eighteen of this article, the Commission shall consider the recommendation of the historical preservation section when making a determination regarding the variance as provided for in subsection (d) of this section.

§29-3-17. Additional remedies to abate, etc., fire hazards.

In case any building, structure or equipment is or is proposed to be erected, constructed, reconstructed, altered, maintained or used, or any land is or is proposed to be used in such a way to endanger life or property from the hazards of fire or explosion or in violation of this article or of any regulation or provision of any regulation, or change thereof promulgated by the state fire commission under the authority granted by this article, the state fire commission, the state fire marshal or the attorney general may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or actions, proceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

§29-3-18. Appellate procedure generally.

(a) Appeals to the state fire commission may be taken by any person aggrieved by an order or decision of the state fire marshal based upon or made in the course of the administration or enforcement of the provisions of this article. Appeals to the state fire commission may be taken by any officer, department, board or agency of the state and political subdivisions thereof adversely affected by an order or decision of the state fire marshal in the course of the administration or enforcement of the provisions of this article.

(b) The time within which such appeal must be made, and the effect, form or other procedure relating thereto, including the appointment and function of a hearing examiner, shall be as specified in regulations promulgated by the state fire commission in accordance with provisions of the administrative procedure act, chapter twenty-nine-a of this code.

(c) Any party aggrieved by a final decision of the state fire commission is entitled to judicial review as provided in the administrative procedure act, chapter twenty-nine-a of this code. The state fire marshal is hereby determined to be a party aggrieved as to any decision of the state fire commission reversing or altering the prior order of the state fire marshal and the state fire marshal shall be a necessary party to any judicial review involving a state fire marshal order.

§29-3-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

The state fire marshal is authorized to establish for educational purposes in public and private schools and state educational

institutions demonstration buildings and equipment for fire prevention and protection, and such expenditures therefor shall be made from the funds appropriated therefor to the office of the state fire marshal.

§29-3-20.

Repealed.

Acts, 2001 Reg. Sess., Ch. 131. **§29-3-21. False alarm of fire; penalties.**

No person shall make, turn in or telephone, or by use of any means or methods of communication aid or abet in the making or turning in of, any alarm of fire which he knows to be false at the time of making or turning in the alarm.

§29-3-22. Tax on insurance companies.

Every insurance company doing business in this state, except farmers' mutual fire insurance companies, shall pay to the state insurance commissioner annually on or before the first day of March, in addition to the taxes now required by law to be paid by the companies, one half of one percent of the taxable premiums of the companies on insurance against the hazard of fire and on that portion of all other taxable premiums reasonably applicable to insurance against the hazard of fire which are included in other coverages, and received by it for insurance on property or risks in this state during the calendar year next preceding as shown by their annual statement under oath to the insurance department. The money so received by the state insurance commissioner is paid by him or her into the treasury and credited to the special revenue fund created in section twelve-b of this article.

§29-3-23. "Fireworks" defined; labels required.

The term "fireworks" means and includes any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs or other fireworks of like construction and any fireworks containing any explosive or flammable compound or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include:

Model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable acro models and shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States department of transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

The following sparklers and novelties shall not be considered fireworks and require a business registration fee be paid to be authorized to sell, as provided for in section eighty-six, article twelve, chapter eleven of this code:

- (1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the caps shall not exceed twenty-five hundredths of a grain for each cap.
- (2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake-like ash when burning.
- (3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.
- (4) Trick noisemakers which produce a small report designed to surprise the user and which include:
 - (a) A party popper, which is a small plastic or paper item containing not in excess of twenty-five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.

(b) A string popper which is a small tube containing not in excess of twenty-five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction-sensitive mixture, producing a small report.

(c) A snapper or drop pop, which is a small paper wrapped item containing no more than twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.

(5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.

(6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand-held or ground-based, cannot propel themselves through the air and contain not more than seventy-five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used: *Provided*, That sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.

§29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.

Except as hereinafter provided, no person, firm, co-partnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks: **Provided**, That the state fire marshal may adopt reasonable rules and regulations for the granting of permits for the supervised displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. The state fire marshal shall have the authority to charge a fee of ten dollars to each applicant requesting a license to be a pyrotechnic operator as set forth in this article. The state fire marshal shall charge a scaled fee for all applications requesting permits to establish a pyrotechnics display as provided in this section. All fees required to be paid by the provisions of this section shall be paid to the state fire marshal and thereafter deposited by him into a special account for the operation of the state fire commission. Such permits may be granted upon application to said state fire marshal and after approval of the local police and fire authorities of the community wherein the display is proposed to be held as provided herein and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the state fire marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the chief of the fire department, after proper inspection, and of the chief of police as to not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The governing body or chief executive authority of the municipality shall require a bond from the licensee in a sum not less than one thousand dollars conditioned on compliance with the provisions of this article and the regulations of the state fire commission: **Provided**, That no municipality shall be required to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the state fire marshal determines to be necessary for the protection of the public.

§29-3-25. Interstate sale and shipment; permitted uses.

No permit shall be issued under the provisions of this article to a nonresident person, firm or corporation for conduct of a pyrotechnic display in this state until such person, firm or corporation shall have appointed in writing a member of the bar of this state and residing therein to be his attorney upon whom all process in any action or proceeding against him may be served.

Nothing in this article shall be construed to prohibit any resident wholesaler, dealer or jobber to sell at wholesale such fireworks as are not herein prohibited or the sale of any kind of fireworks provided the same are to be shipped directly out of state in accordance with regulations of the United States department of transportation covering the transportation of explosives and other

dangerous articles by motor, rail and water, or the use of fireworks by railroads or other transportation agencies for signal purposes or illumination, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations, or the use of fireworks for agricultural purposes under conditions approved by the local authority.

§29-3-26. Seizures by fire marshal; enforcement of law.

The state fire marshal shall seize, take, remove and destroy, or cause to be seized, taken or removed and destroyed, at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored or held in violation of this article. It shall be the duty of the department of public safety, sheriffs, municipal policemen and other law-enforcement officers to assist in the enforcement of this article.

§29-3-27. Penalties.

(a) Any person who violates any regulations promulgated by the state fire commission as provided in section five of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or confined in the county or regional jail not more than ninety days, or both.

Each day during which any illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that it is illegal is a separate offense.

(b) Except as provided by the provisions of subsection (c) of this section, any person who violates the provisions of section twenty-one of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined for a first offense not more than one hundred dollars or confined in the county or regional jail for not more than thirty days or both fined and confined and for a second and each subsequent offense fined not less than one hundred dollars nor more than five hundred dollars or confined in the county or regional jail for not less than ninety days nor more than one year, or both.

(c) Any person who violates the provisions of section twenty-one of this article with the intent to cause injury to the person of another, to cause destruction of the property of another or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one nor more than three years, or fined not more than five thousand dollars, or both.

(d) Any officer who fails to perform any duty required of him or her by this article or who violates any of its provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than fifty dollars for each failure or violation.

(e) Any person who violates any other provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or confined in the county or regional jail not more than ninety days, or both.

§29-3-28. Transfer of certain state employees; perpetuation of rules, regulations and orders.

(a) All employees, agents or officers of any state agency, department or commission, the functions of which are transferred to the state fire commission by the provisions of this article, and whose employment is covered and protected by the provisions of article six, chapter twenty-nine of this code and the rules and regulations promulgated by the civil service commission, and whose service is classified by such provisions, rules and regulations, shall continue in their employment in all respects and in the same classification, coverage and protection upon the transfer of such functions from the agency, department or commission by which they were employed to the state fire commission.

(b) All rules and regulations promulgated and all orders in effect and all proceedings pending on the effective date of this chapter, which were promulgated or effected or brought under any authority transferred to the state fire commission herein created and, as herein provided, shall remain in full effect unless otherwise provided in this article or until amended, revoked, suspended, modified, repealed or superseded, as the case may be.

§29-3-29. Construction.

Being in the interest of public safety, the provisions of this article shall be liberally construed.

§29-3-30. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.

§29-3-31. Continuation of the state fire commission.

The state fire commission shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished pursuant to the provisions of that article